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FILED
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JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 825

DAVE FLEISCHER, individually and as Trustee in dissolution of FLEISCHER STUDIOS, INCORPORATED, a Florida corporation,

Petitioner,

against

PARAMOUNT PICTURES, INC., PARAMOUNT PICTURES CORPORATION and FLAMINGO FILMS, INC.,

Defendants-Respondents,

and

A.A.P., INC., ASSOCIATED ARTISTS PRODUCTIONS, INC., U. M. & M. T. V. CORP., WPIX, INC., DUMONT BROADCASTING CORPORATION, KING FEATURES SYNDICATE, INC., FLEISCHER STUDIOS, INCORPORATED, a New York corporation, MAX FLEISCHER, individually and as co-trustee with plaintiff of FLEISCHER STUDIOS, INCORPORATED, a Florida corporation,

Defendants,

and

ROBERT S. BENJAMIN and ARTHUR B. KRIM,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

STATEMENT OF A.A.P., INC. AND ASSOCIATED ARTISTS PRODUCTIONS, INC., IN OPPOSITION TO PETITION FOR CERTIORARI

FRANK A. BULL,
DANIEL HUTTENBAUCK,
Attorneys for A.A.P., Inc.; and Associated Artists Productions, Inc.

Bowne & Co., Inc., 163 Front Street, New York 38

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STATEMENT OF A.A.P., INC. AND ASSOCIATED ARTISTS PRODUCTIONS, INC., IN OPPOSITION TO PETITION FOR CERTIORARI

A.A.P., Inc. and Associated Artists Productions, Inc. are only indirectly concerned with the matters involved in the petition for certiorari,—vexatious and acrimonious motions wholly collateral to any issues involved in the pending

action. However, we have read the petition for certiorari, as well as the briefs to be filed by the other parties; and we fully subscribe to the position of the other defendants and respondents as disclosed by the briefs. We find no merit in the petitioner's motions and can ascribe to the motive behind them only an apparent desire to harass and inveigh unjustly against other attorneys, to the detriment of the matters actually involved in the pending action.

It may not be of any importance that we consider the principal action to be spite litigation, but it would seem evident that the collateral motions are part of a spite campaign. The unwarranted attack by petitioner's attorney on opposing attorneys would be ludicrous were it not for the fact that it can only result in serious delay and needless expense to all parties, including those which we represent. The litigation has been pending for nearly a year and a half without being at issue, and issue being made impossible by the tactics of petitioner's attorney in making collateral attacks on other attorneys.

This is litigation commenced by petitioner in which the wheels of justice are grinding very slowly because of petitioner forcing a feud with other attorneys. In that respect we are interested and involved. The scandalous charges made by petitioner's attorney against other reputable and highly regarded attorneys do not involve us or any of the parties to the principal action, but they do affect all defendants in delaying the proper administration of justice.

There is only one issue involved in this application for certiorari, i.e., whether the two District Court decisions were appealable. If they were not, we are all back to where we were months ago when these decisions were rendered. If they were appealable, the only possible result would be their affirmance by a higher court. We respectfully suggest that a stop should be put to petitioner's attorney's nonsense and the real issues in the action allowed to be litigated.

CONCLUSION.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

FRANK A. BULL,
DANIEL HUTTENBRAUCK,
Attorneys for A.A.P., Inc., and
Associated Artists Productions, Inc.